



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

VIA EMAIL READ RECEIPT REQUESTED

September 3, 2020

Thomas N. O'Brien
The McClellan Highway Development Company, LLC
c/o The HYM Investment Group, LLC
One Congress Street
Boston, MA 02114

Re: Termination of the National Pollutant Discharge Elimination System (NPDES) permit No. MA0040282, for the McClellan Highway Development Company, LLC site located at 111 Waldemar Avenue, East Boston MA 02128.

Dear Mr. O'Brien:

This letter serves as a notice that NPDES permit No. MA0040282 ("permit") will be terminated. The current permit for this site was issued to Sterling Suffolk Racecourse, LLC ("Suffolk") on September 30, 2015, and subsequently modified on September 14, 2016. At that time of permit issuance, Suffolk was engaged in the operation of the site as a horse racetrack, and, as such, was classified as a Large Horse Concentrated Animal Feeding Operation ("CAFO"). In addition to being regulated under applicable CAFO regulations, the permittee was subject to the industrial storm water permitting requirements at 40 C.F.R. § 122.26. NPDES storm water regulations at 40 C.F.R. § 122.26 (b)(14) define eleven categories of "storm water discharge associated with industrial activity." Facilities engage in "industrial activity" pursuant to 40 C.F.R. § 122.26 (b)(14)(i) if, among other things, they are subject to storm water effluent limitations guidelines. As a Large Horse CAFO, the permittee was subject to the storm water effluent limitation guidelines set forth at 40 C.F.R. § 412.13 and was accordingly required to comply with applicable industrial storm water permitting requirements.

The permit included effluent limitations and monitoring requirements for several parameters for both the two (2) outfalls associated with the discharge of process wastewater from the CAFO production area and from ten (10) stormwater outfalls associated with the industrial activity. On May 26, 2017, this permit was transferred from Suffolk to the McClellan Highway Development Company, LLC ("McClellan"). McClellan will be redeveloping Suffolk Downs into an urban mixed-use neighborhood. McClellan notified EPA that all horse racing operations and activities under the CAFO permit had ceased, and that coverage for the remaining stormwater discharges were covered under the Construction General Permit.

Since McClellan no longer engages in any activities subject to the CAFO regulations and has completed the facility closure requirements specified in the permit; and the remaining discharges are covered under the Construction General Permit, EPA has determined that an individual

permit is no longer needed.

Federal regulations at 40 C.F.R. §122.64 establish causes for terminating a NPDES permit. Since there is no discharge from this portion of the site at this time which would require an individual NPDES permit, EPA is following the “termination by notice” procedures found in 40 C.F.R. §122.64(b). In accordance with these procedures, you are hereby notified that EPA will terminate your NPDES permit, No. MA0004282, thirty (30) days after your receipt of this letter unless you object to the termination. If you object to NPDES Permit No. MA0004282 being terminated, you must notify EPA within thirty (30) days of receiving this notice and ensure that you state specifically why you disagree with this termination notice. If after review of those comments the EPA still believes termination is appropriate, we will solicit public comment related to terminating the permit in accordance with 40 C.F.R. §124. If you do not object to the termination of your permit, EPA will terminate the permit at the end of the thirty (30) day period with no further notice. After the termination date, McClellan Highway Development Company, LLC will no longer be subject to the terms and conditions of this individual permit.

If there is a discharge of pollutants into a water of the United States (U.S.) from this facility in the future which would require an NPDES permit, an application for such discharge must be made to this Agency at least 180 days in advance of the proposed discharge [(See 40 C.F.R. §122.21(c)(1)]. Any proposed new discharge which meets the definition of new source at 40 CFR §122.2 must meet the requirements of any applicable “new source performance standards” for your industry. Discharge to a water of the U.S. without obtaining a permit would violate Section 301(a) of the Clean Water Act (CWA), and would subject McClellan Highway Development Company, LLC to the civil and/or criminal enforcement provisions of Section 309 of the CWA.

If you have any questions regarding this determination, please contact Meridith Finegan of my staff at (617) 918-1533.

Sincerely,

Ken Moraff, Director
Water Division

cc: Claire Golden, MassDEP
Susannah King, MassDEP
Diane Boisclair, EPA – via EMAIL